

APPEAL NO. 010686

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 8, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on February 10, 2000, with a 5% impairment rating (IR). On appeal, the claimant expresses disagreement with the hearing officer's decision and requests that a new decision be rendered that he reached MMI on March 17, 2000, with a 12% IR. The respondent (carrier) asserts that the claimant's appeal was not filed timely and urges affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

The records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on February 14, 2001. Applying the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 102.3(a)(3) and 102.5(d) (Rules 102.3(a)(3) and 102.5(d)), the claimant was deemed to have received the hearing officer's decision by February 19, 2001. While the claimant indicates in his appeal that he was working out of town from February 12, 2001, through March 13, 2001, on which date he alleges that he actually received the hearing officer's decision, this does not extend the filing period. Texas Workers' Compensation Commission Appeal No. 92727, decided February 12, 1993; Texas Workers' Compensation Commission Appeal No. 94054, decided February 15, 1994. See *also* Texas Workers' Compensation Commission Appeal No. 950039, decided February 16, 1995; and Texas Workers' Compensation Commission Appeal No. 94117, decided March 3, 1994.

Pursuant to Section 410.202(a), for an appeal to be considered timely it must be filed or mailed within 15 days of the date of receipt of the hearing officer's decision. Rule 143.3(c) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Fifteen days from February 19, 2001, would have been March 7, 2001. The envelope containing the claimant's appeal is postmarked March 28, 2001. Therefore, the appeal was mailed well beyond the required 15 days.

The claimant's appeal being untimely, the decision and order of the hearing officer have become final. Section 410.169.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge